

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34508

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS –
LEASE AND OPERATION EXEMPTION – CSX TRANSPORTATION, INC.

Decided: July 15, 2004

We are granting a petition of the Central Railroad Company of Indianapolis, Chicago, Ft. Wayne & Eastern Railroad Division (CFER) for waiver of the requirements of 49 CFR 1150.42(e)¹ to the extent necessary to permit CFER's planned lease and operation of approximately 276 miles of CSX Transportation, Inc. (CSXT) rail line in Indiana and Ohio to go forward as scheduled on August 1, 2004. In granting the relief requested by CFER, we are directing that notice of the transaction be posted no later than July 19, 2004, at the Pittsburgh, PA workplace of certain employees of Norfolk Southern Railway Company (NS) who dispatch the rail line.

BACKGROUND

The rail line that is the subject of the lease consists of: (1) the Fort Wayne line between Adams, IN, milepost QF 314.0, and Crestline, OH, milepost QF 191.3; (2) the Fort Wayne Secondary between Tolleston, IN, milepost QF 441.8, and Adams, IN, milepost QF 314.0; (3) the Decatur Second between Adams, IN, milepost QFD 86.6, and Decatur, IN, milepost QFD 70.4; and (4) the Spore Industrial Track between Bucyrus, OH, milepost QFS 69.32, and Spore, OH, milepost QFS 62.85. CSXT currently owns and operates the line, which CFER plans to lease and operate starting August 1, 2004. To obtain the requisite Board authorization (subject to meeting the requirements of 49 CFR 1150.42(e)), CFER, on July 2, 2004, filed a notice of exemption under 49 CFR 1150.41 to lease and operate the line.

¹ "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so."

CFER states that, as required by 49 CFR 1150.42(e), on May 18, 2004, it posted, with CSXT's cooperation, a notice at the workplace of the CSXT employees on the line and served a copy of the notice on the national offices of the labor unions.² CFER states further that it has been advised that up to four dispatchers employed at NS's Pittsburgh office, where the line is currently dispatched pursuant to an agreement between CSXT and NS, may also be affected by the proposed transaction. CFER indicates that it attempted to notify the individual NS dispatchers by requesting that NS post the notice at its Pittsburgh dispatching office, but NS refused to do so. Because of these circumstances, by petition filed on June 30, 2004, CFER requests waiver of the requirement at 49 CFR 1150.42(e) to permit the exemption it is seeking in this proceeding to become effective without providing the 60-day advance notice to the employees at NS's Pittsburgh office. In its waiver request, CFER asks that the Board find that it is not required to notify the NS dispatchers under section 1150.42(e), because they are not located on the affected line, or waive those requirements with respect to these NS employees, as CFER has, in its view, taken every reasonable step to notify the dispatchers but cannot comply with the notice requirement without trespassing. CFER states that it plans to start operations on August 1, 2004, and asserts that a delay in starting operations will cause CFER to incur substantial costs and harm its reputation with its customers.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirement at 49 CFR 1152.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.³ While we do not ordinarily grant waivers of the employee advance notice requirement, it appears that CFER has done everything it lawfully can to comply with this requirement. It has given proper notice to employees on the affected lines and their unions and attempted, without success, to notify NS dispatchers at Pittsburgh. However, because those dispatchers may be affected by this transaction, they are entitled to notice and NS may not deprive them of that right. Accordingly, NS will be ordered to post CFER's notice at the Pittsburgh dispatching office, or to permit CFER to post it, by July 19, 2004, so that these employees will be advised of the proposed transaction. NS or CFER must also immediately thereafter certify to the Board that the notice has been posted. With that notice being given to those employees, we will grant the waiver request so that the parties need not wait until 60 days after that date but may close the transaction as scheduled on August 1, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

² By letter filed at the Board on May 20, 2004, CFER certified its actions.

³ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

It is ordered:

1. CFER's request for waiver is granted as discussed in this decision.
2. NS is ordered to post CFER's notice at the Pittsburgh dispatching office, or to permit CFER to do so, by no later than July 19, 2004, and NS or CFER shall immediately thereafter certify to the Board that the notice has been posted.
3. This decision is effective on its service date.
4. A copy of this decision shall be served on Norfolk Southern Railway Company, 3 Commercial Place, Norfolk, VA 23510.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary